

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937**

**WP(C).No. 15858 of 2015 (F)**  
-----

**PETITIONER(S):**  
-----

1. PETER,  
S/O.PAPPU, KALLARACHULLIL HOUSE, KARUKUTTY,  
ERNAKULAM DISTRICT.
2. THOMAS,  
S/O.PAPPU, KALLARACHULLIL HOUSE, KARUKUTTY,  
ERNAKULAM DISTRICT.

**BY ADVS.SRI.C.P.WILSON  
SRI.V.TEKCHAND**

**RESPONDENT(S):**  
-----

1. KARUKUTTY GRAMA PANCHAYATH,  
REPRESENTED BY ITS SECRETARY, KARUKUTTY P.O.,  
PIN-683576, ERNAKULAM DISTRICT.
2. SECRETARY,  
KARUKUTTY GRAMA PANCHAYAT,  
KARUKUTTY P.O., PIN-683576,  
ERNAKULAM DISTRICT.

**BY ADV. SRI.G.SANTHOSH KUMAR (P).**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-07-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**PJ**

**WP(C).No. 15858 of 2015 (F)**  
-----

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

**EXT.P1 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE R1.**

**EXT.P2 : TRUE COPY OF THE ORDER DT.16-4-2015. REFUSING PERMIT**

**EXT.P3 : PHOTOGRAPHS OF THE PROPERTY.**

**EXT.P4 : TRUE COPY OF THE COMMUNICATION OF THE AGRICULTURAL OFFICER,  
KRISHI BHAVAN, KARUKUTTY DT.27-4-2015.**

**RESPONDENT(S)' EXHIBITS**  
-----

**NIL.**

**/ TRUE COPY /**

**P.S. TO JUDGE**

**PJ**

**A.V.RAMAKRISHNA PILLAI, J**

-----  
WPC No.15858 of 2015  
-----

Dated this the 1st day of July, 2015

**JUDGMENT**

Ext.P2 order rejecting the petitioners' application for building permit is under challenge in this writ petition.

2. The petitioners along with two others, viz.Sri.Joy and Sri.Shijo are the absolute owners in possession of 3 acres 11 sq. metres of land in Sy.No.111/9/5 of Block No.3 of Karukutty Village. The petitioners along with the co-owners submitted an application for building permit before the first respondent Panchayat which was rejected by Ext.P2 on the ground that the property is classified as nilam as per village records. The property in question at present houses a building from 2001-2002 onwards.

3. Arguments have been heard.

4. The learned counsel for the petitioners,

inviting my attention to Ext.P3 photographs, would argue that already there is an existing building in the said property which was constructed prior to the commencement of the Building Rules. Ext.P3 would reveal that the very nature of the property has been changed by the construction of the building which has been numbered by the respondent Municipality. The petitioner further submits that as per Ext.P4 the property of the petitioner is not included in the data bank.

5. The decision of this Court in ***Mohammed Abdul Basheer C.P. v State of Kerala and another*** (2012(3) KLT 86) lays down the principle that the present position of the land has to be taken into consideration and on ascertaining these facts, permission can be granted for construction.

6. It can be seen from Ext.P3 photographs that the property is not a paddy land. It is settled position that the applicant can choose the best land suited for construction of his house (***Sunil v***

**Killimangalam-Panjai 5<sup>th</sup> Ward Nellulpadaka Samootham** 2012(4) KLT 511). Only if there is cultivation presently then it will be considered as cultivating paddy land so as to attract the provisions of the Kerala Conservation of Paddy Land and Wetland Act and Rules.

7. In **Jalaja Dileep v Revenue Divisional Officer** (2012(3) KLT 333) this Court observed that the description in the title deed or in revenue records will not be crucial if the property is reclaimed already. The aforesaid legal position settled by this Court escaped the attention of the authorities while rejecting the petitioner's application. Therefore, this writ petition is allowed. Ext.P2 is quashed.

The respondent Panchayat is directed to conduct a local inspection of the property regarding the present lie as well as the condition of the property of the petitioners and surrounding properties. The respondents are also directed to re-

consider the application and pass orders granting permit, if they are satisfied that the land in the present form is unfit for paddy cultivation. The petitioners shall be given an opportunity of being heard. This shall be done within a period of two months from the date of receipt of a copy of this judgment.

**Sd/-A.V.RAMAKRISHNA PILLAI  
JUDGE**

CSS/

**true copy**

**P.S.TO JUDGE**